

Decision 05-09-002 September 8, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
Proposing Cost of Service and Rates for Gas  
Transmission and Storage Services for 2005 and  
Backbone Level Service and Rates Starting  
January 1, 2005, as Required by Commission  
Decision 03-12-061.

Application 04-03-021  
(Filed March 19, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO THE UTILITY REFORM NETWORK**

This decision awards The Utility Reform Network (TURN) \$36,385.45 as compensation for its substantial contribution to Decision (D.) 04-12-050.

**I. Background**

D.04-12-050 adopted a comprehensive settlement and related tariff changes that continues the basic natural gas market structure for Pacific Gas and Electric Company (PG&E), for the three-year period beginning January 1, 2005. This settlement, the "Gas Accord III Settlement Agreement" (Gas Accord III), follows the Gas Accord II, adopted in D.03-12-061, and the initial Gas Accord, adopted in D.97-08-055.

The Gas Accord III involved many parties with interests in all segments of the natural gas industry. All active parties in this proceeding, including TURN, are included in the agreement, and no protests on the settlement were received. The major elements of Gas Accord III are: eligibility standards and cost allocation methodology for backbone-level end-use service; increased access

to PG&E's backbone transmission system by transport agents and storage providers; a process for bidding on incremental gas storage needs; 2005-2007 backbone load factor; and a phase-in on "direct assignment" cost allocation. TURN participated in all phases of this proceeding.

## **II. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceeding. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances, at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802 (h), 1803(a).)

6. The claimed fees and costs are reasonable comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

### **III. Timeliness and Customer Status**

The PHC in this matter was held on May 11, 2004, and TURN timely filed its NOI on June 10, 2004. In its NOI, TURN addressed its anticipated scope of participation, estimated cost of participation, customer status and significant financial hardship.

TURN is a non-profit consumer advocacy group, specifically organized to represent the interests of residential and small commercial utility customers in California, with a long history of representing consumers before the Commission. TURN timely filed its request for request for compensation within 60 days of D.04-12-050 being issued. Considering the above, we find TURN to be a customer and to have met the timeline for filings necessary to make its request for compensation.

### **IV. Financial Hardship**

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of participation. (Pub. Util. Code § 1802(g).) Such a finding is normally made in a preliminary ruling by the assigned Administrative Law Judge (ALJ) as to whether the customer will be eligible for compensation (§ 1804(b)).

No preliminary ruling was issued in this proceeding. However, a finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding (§1804(b)(1)). In D.04-10-033, TURN was found eligible for intervenor compensation, two months prior to this request, and was awarded compensation. We therefore find TURN meets the significant financial hardship condition here.

## **V. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commissioner adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(h), 1802.5.) As described in § 1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission. (*See* D.98-04-059.)

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded, if, in the judgment of the

Commission, the customer's participation substantially contributed to the decision or order. (*See* D.03-12-019.) With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

In this proceeding, TURN participated actively by conducting discovery and submitting the testimony of William Marcus of JBS Energy, Inc., and of its own witness Michel Florio. TURN provided analyses and recommendations concerning both the capital and expense portions of the revenue requirement calculation, the backbone load factor, and the eligibility criteria for the backbone only rate. TURN supported the Commission's Office of Ratepayer Advocates (ORA) positions concerning the revenue requirement and recommended additional reductions of approximately one million dollars in operating and maintenance (O&M) expenses and seven million dollars in working cash capital. TURN proposed a higher backbone load factor and generally supported PG&E's backbone-level eligibility criteria.

TURN was signatory to the Gas Accord III, submitted on August 27, 2004, which resolved all outstanding issues. The Gas Accord III reduced the revenue requirement by \$7.9 million, adopted a load factor almost exactly the same as recommended by TURN, and adopted PG&E's proposed criteria for eligibility. The Gas Accord III set rates and terms for a three-year period, rather than just 2005 as originally proposed. TURN's substantial contributions are directly reflected in the Gas Accord III itself, as compared to the positions of the utility and other intervenors.

Specifically, in the direct testimonies of Marcus and Florio, TURN recommended the following:

- Adoption of PG&E's three proposed criteria for eligibility for a backbone-only rate (Florio, p. 3);

- Adoption of a higher adjusted system load factor of 74.05%, rather than PG&E's 70.91%, by removing PG&E's proposed "Backbone Throughput Adjustment" (Florio, pp. 4-9);
- Disallowing approximately \$0.4 million in O&M expenses due to deferred maintenance (Marcus, pp. 2-3).
- Disallowing approximately \$0.6 million in O&M expenses due to a reduction of district fees (Marcus pp. 3-5); and
- Reducing cash working capital by about seven million dollars by including accrued vacation as an offset (Marcus, pp. 5-6).

The adopted Gas Accord III reflected these recommendations in whole or part. Consequently, we conclude that TURN substantially contributed

D.04-12-050.

### **B. Duplication**

TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. The intervenor compensation statute allow the Commission to award full compensation even where a party's participation has overlapped in part with the showings made by other parties. (Pub. Util. Code § 1802.5.) TURN minimized duplication, for example, by addressing issues concerning cost of service not covered by ORA. Even when TURN shared the same or similar position with another party, TURN's analysis supplemented or complemented the showing of the other party.

### **C. Benefits to Ratepayers**

In D.98-04-059, we directed intervenors filing compensation requests to attempt to monetize the benefits accruing to ratepayers as a result of the intervenor's participation. We stated that such an assessment would ensure that:

1) ratepayers receive value from compensated intervention; and 2) only reasonable costs are compensated. (D.98-04-059, *mimeo.*, p. 73.)

The Gas Accord III reduced O&M expenses by approximately \$1.4 million, and reduced the capital component of the revenue requirement by \$0.7 million.<sup>1</sup> It is impossible to directly compare TURN's recommended disallowances and reductions with the revenue requirement proposed in the Gas Accord III. However, the adoption of a backbone load factor that is 4% above PG&E's proposed load factor provides a benefit to ratepayers estimated at between \$8 and \$14 million annually. In sum, TURN's participation appears productive.

## **VI. Reasonableness of Requested Compensation**

As described in the following tables, TURN requests compensation for \$36,385.45, including \$27,953 for attorney time, \$8,390.45 for JBS Energy consulting services, and \$42 for direct expenses. TURN provided detailed costs for professional attorney time, consulting services, attorney and expert witness time sheets, and itemized direct expenses. Attorney time related to the compensation request was discounted by 50%.

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<sup>1</sup> See D.04-12-050, App. A, Table A-3; Joint Motion for Approval, Exhibit 4.

**Table 1: Professional Attorney Expenses**

Attorney/Expert Witness			Substantive		Compensation Related		Total Hours		Percent Claimed	Total Compensation
	Billing Period	Hourly Rate	Hours Expended	Hours Claimed	Hours Expended	Hours Claimed	Expended	Claimed		
Marcel Hawiger	2004	\$270.00	29.15	29.15	9.50	4.75	38.65	33.90	87.71%	\$9,153.00
Michel P. Florio	2004	\$470.00	40.00	40.00	0.00	0.00	40.00	40.00	100.00%	\$18,800.00
<b>TOTAL</b>							78.65	73.9	93.96%	<b>\$27,953.00</b>

**Table 2: Professional Consulting Expenses**

Witness	Time Period	Hourly Rate	Hours	Total Expenses
William B. Marcus	2004	195	14.31	\$2,790.45
Jeffrey Nahigian	2004	140	40.00	\$5,600.00
<b>TOTAL</b>				<b>\$8,390.45</b>



## **B. Attorney Hours**

TURN requests compensation for attorney's Marcel Hawiger and Florio, for less than 80 hours of professional time, which is reasonable for a case that set revenue requirement and rates for three years for transmission and storage services. Florio's time includes work on settlement and pleadings, as well as time preparing expert witness testimony. The hourly rates requested for Florio (\$470) and Hawiger (\$270) for 2004 have previously been adopted in D.05-01-029 and D.05-05-046, respectively, and are approved here.

## **2. Consulting Hours**

TURN seeks to recover the \$8,390.45 in costs billed by consultant JBS Energy, Inc. (JBS Energy). The total sought for JBS Energy expert witness expenses represents a reasonable hourly rate applied for the work performed by Marcus and Jeffrey Nahigian. Marcus, Principal Economist for JBS Energy, prepared testimony addressing O&M expenses and working cash capital requirements. Nahigian, Senior Economist for JBS Energy, conducted research and analysis related to O&M expense issues.

The hourly rates requested for TURN's expert witnesses reflect the actual recorded or billed costs that TURN incurred in retaining their services (§ 1802 (c)). The 2004 hourly rates of \$195 for Marcus and \$140 for Nahigian previously were approved in D.05-06-031, and we adopt those rates here.

## **VII. Award**

We award TURN \$36,385.45 for its substantial contributions to D.04-12-050. This calculation is based on the hourly rates and related business expenses described above and we find these rates and expenses reasonable. The appendix includes a summary of today's award.

This proceeding is a gas rate structure case specific to PG&E, and therefore it is responsible for award payment. Consistent with previous Commission decisions, we will order that, after May 8, 2005 (the 75<sup>th</sup> day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15. Interest will continue on this award until full payment is made.

We remind TURN that, like all intervenors, Commission staff may audit TURN's records related to this award and that intervenors must make and retain adequate accounting and all other documentation to support all claims for intervenor compensation.

#### **VIII. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **IX. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. TURN is a customer pursuant to § 1802(b), has met the requirement for financial hardship pursuant to § 1804(a)(2)(B), and is eligible to file for an award of intervenor compensation.
2. TURN made a substantial contribution to D.04-12-050 as described herein.
3. TURN's requested hourly rates for attorneys and experts, and related expenses, are reasonable when compared to the market rates for persons with similar training and experience.

4. The total of the reasonable compensation is \$36,385.45.
5. The Appendix to this opinion summarizes today's award.

### **Conclusions of Law**

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.04-12-050.
2. TURN should be awarded \$36,385.45 for its contribution to D.04-12-050.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that TURN may be compensated without further delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$36,385.45 as compensation for its substantial contributions to Decision 04-12-050.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 8, 2005, the 75<sup>th</sup> day after the filing date of TURN's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.

4. Application 04-03-021 is closed.

This order is effective today.

Dated September 8, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
JOHN A. BOHN  
Commissioners

### Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0509002	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0412050	
<b>Proceeding(s):</b>	A0403021	
<b>Author:</b>	ALJ Walwyn	
<b>Payer(s):</b>	Pacific Gas and Electric Company	

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier ?</b>	<b>Reason Change/Disallowance</b>
The Utility Reform Network	2/22/2005	\$36,385.45	\$36,385.45	No	

### Advocate Information

<b>Firs Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	270	2004	\$270
Michel	Florio	Attorney	The Utility Reform Network	\$470	2004	\$470
William	Marcus	Economist	The Utility Reform Network	\$195	2004	\$195
Jeff	Nahigian	Economist	The Utility Reform Network	\$140	2004	\$140

A.04-03-021 ALJ/CMW/avs

[ATTACH A TO WALWYNS A0403021](#)